

AMENDED IN ASSEMBLY MARCH 29, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 794

Introduced by Assembly Member Chu

February 18, 2005

An act to amend Section 6254 of the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 794, as amended, Chu. Public records: health care contracts.

Existing law, the California Public Records Act, requires public agencies to make their records available for public inspection unless specific exemptions apply. The act provides that records relating to the negotiation of contracts for health coverage entered into by the state with health plans under specified programs generally are exempt from disclosure but that those contracts, except for rates, shall be open to public inspection one year after being executed, and the rates in those contracts shall be open to public inspection 3 years after being executed. The act further provides that, notwithstanding these provisions, each entire contract shall be open to inspection by the Joint Legislative Audit Committee.

This bill would provide that these contracts also shall be open to inspection by the Legislative Analyst's office. *The bill would also make other related and technical changes.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to any of the following:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or

1 security files compiled by any other state or local police agency,
 2 or any investigatory or security files compiled by any other state
 3 or local agency for correctional, law enforcement, or licensing
 4 purposes, except that state and local law enforcement agencies
 5 shall disclose the names and addresses of persons involved in, or
 6 witnesses other than confidential informants to, the incident, the
 7 description of any property involved, the date, time, and location
 8 of the incident, all diagrams, statements of the parties involved in
 9 the incident, the statements of all witnesses, other than
 10 confidential informants, to the victims of an incident, or an
 11 authorized representative thereof, an insurance carrier against
 12 which a claim has been or might be made, and any person
 13 suffering bodily injury or property damage or loss, as the result
 14 of the incident caused by arson, burglary, fire, explosion, larceny,
 15 robbery, carjacking, vandalism, vehicle theft, or a crime as
 16 defined by subdivision (b) of Section 13951, unless the
 17 disclosure would endanger the safety of a witness or other person
 18 involved in the investigation, or unless disclosure would
 19 endanger the successful completion of the investigation or a
 20 related investigation. However, nothing in this division shall
 21 require the disclosure of that portion of those investigative files
 22 that reflect the analysis or conclusions of the investigating
 23 officer.

24 Customer lists provided to a state or local police agency by an
 25 alarm or security company at the request of the agency shall be
 26 construed to be records subject to this subdivision.

27 Notwithstanding any other provision of this subdivision, state
 28 and local law enforcement agencies shall make public the
 29 following information, except to the extent that disclosure of a
 30 particular item of information would endanger the safety of a
 31 person involved in an investigation or would endanger the
 32 successful completion of the investigation or a related
 33 investigation:

34 (1) The full name and occupation of every individual arrested
 35 by the agency, the individual's physical description including
 36 date of birth, color of eyes and hair, sex, height and weight, the
 37 time and date of arrest, the time and date of booking, the location
 38 of the arrest, the factual circumstances surrounding the arrest, the
 39 amount of bail set, the time and manner of release or the location
 40 where the individual is currently being held, and all charges the

1 individual is being held upon, including any outstanding warrants
2 from other jurisdictions and parole or probation holds.

3 (2) Subject to the restrictions imposed by Section 841.5 of the
4 Penal Code, the time, substance, and location of all complaints or
5 requests for assistance received by the agency and the time and
6 nature of the response thereto, including, to the extent the
7 information regarding crimes alleged or committed or any other
8 incident investigated is recorded, the time, date, and location of
9 occurrence, the time and date of the report, the name and age of
10 the victim, the factual circumstances surrounding the crime or
11 incident, and a general description of any injuries, property, or
12 weapons involved. The name of a victim of any crime defined by
13 Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286,
14 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code
15 may be withheld at the victim's request, or at the request of the
16 victim's parent or guardian if the victim is a minor. When a
17 person is the victim of more than one crime, information
18 disclosing that the person is a victim of a crime defined by
19 Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 286, 288,
20 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may
21 be deleted at the request of the victim, or the victim's parent or
22 guardian if the victim is a minor, in making the report of the
23 crime, or of any crime or incident accompanying the crime,
24 available to the public in compliance with the requirements of
25 this paragraph.

26 (3) Subject to the restrictions of Section 841.5 of the Penal
27 Code and this subdivision, the current address of every individual
28 arrested by the agency and the current address of the victim of a
29 crime, where the requester declares under penalty of perjury that
30 the request is made for a scholarly, journalistic, political, or
31 governmental purpose, or that the request is made for
32 investigation purposes by a licensed private investigator as
33 described in Chapter 11.3 (commencing with Section 7512) of
34 Division 3 of the Business and Professions Code, except that the
35 address of the victim of any crime defined by Section 220, 261,
36 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289,
37 422.6, 422.7, 422.75, or 646.9 of the Penal Code shall remain
38 confidential. Address information obtained pursuant to this
39 paragraph may not be used directly or indirectly, or furnished to
40 another, to sell a product or service to any individual or group of

1 individuals, and the requester shall execute a declaration to that
2 effect under penalty of perjury. Nothing in this paragraph shall be
3 construed to prohibit or limit a scholarly, journalistic, political, or
4 government use of address information obtained pursuant to this
5 paragraph.

6 (g) Test questions, scoring keys, and other examination data
7 used to administer a licensing examination, examination for
8 employment, or academic examination, except as provided for in
9 Chapter 3 (commencing with Section 99150) of Part 65 of the
10 Education Code.

11 (h) The contents of real estate appraisals or engineering or
12 feasibility estimates and evaluations made for or by the state or
13 local agency relative to the acquisition of property, or to
14 prospective public supply and construction contracts, until all of
15 the property has been acquired or all of the contract agreement
16 obtained. However, the law of eminent domain shall not be
17 affected by this provision.

18 (i) Information required from any taxpayer in connection with
19 the collection of local taxes that is received in confidence and the
20 disclosure of the information to other persons would result in
21 unfair competitive disadvantage to the person supplying the
22 information.

23 (j) Library circulation records kept for the purpose of
24 identifying the borrower of items available in libraries, and
25 library and museum materials made or acquired and presented
26 solely for reference or exhibition purposes. The exemption in this
27 subdivision shall not apply to records of fines imposed on the
28 borrowers.

29 (k) Records, the disclosure of which is exempted or prohibited
30 pursuant to federal or state law, including, but not limited to,
31 provisions of the Evidence Code relating to privilege.

32 (l) Correspondence of and to the Governor or employees of the
33 Governor's office or in the custody of or maintained by the
34 Governor's Legal Affairs Secretary, provided that public records
35 shall not be transferred to the custody of the Governor's Legal
36 Affairs Secretary to evade the disclosure provisions of this
37 chapter.

38 (m) In the custody of or maintained by the Legislative
39 Counsel, except those records in the public database maintained
40 by the Legislative Counsel that are described in Section 10248.

1 (n) Statements of personal worth or personal financial data
2 required by a licensing agency and filed by an applicant with the
3 licensing agency to establish his or her personal qualification for
4 the license, certificate, or permit applied for.

5 (o) Financial data contained in applications for financing
6 under Division 27 (commencing with Section 44500) of the
7 Health and Safety Code, where an authorized officer of the
8 California Pollution Control Financing Authority determines that
9 disclosure of the financial data would be competitively injurious
10 to the applicant and the data is required in order to obtain
11 guarantees from the United States Small Business
12 Administration. The California Pollution Control Financing
13 Authority shall adopt rules for review of individual requests for
14 confidentiality under this section and for making available to the
15 public those portions of an application that are subject to
16 disclosure under this chapter.

17 (p) Records of state agencies related to activities governed by
18 Chapter 10.3 (commencing with Section 3512), Chapter 10.5
19 (commencing with Section 3525), and Chapter 12 (commencing
20 with Section 3560) of Division 4 of Title 1, that reveal a state
21 agency's deliberative processes, impressions, evaluations,
22 opinions, recommendations, meeting minutes, research, work
23 products, theories, or strategy, or that provide instruction, advice,
24 or training to employees who do not have full collective
25 bargaining and representation rights under these chapters.
26 Nothing in this subdivision shall be construed to limit the
27 disclosure duties of a state agency with respect to any other
28 records relating to the activities governed by the employee
29 relations acts referred to in this subdivision.

30 (q) Records of state agencies related to activities governed by
31 Article 2.6 (commencing with Section 14081), Article 2.8
32 (commencing with Section 14087.5), and Article 2.91
33 (commencing with Section 14089) of Chapter 7 of Part 3 of
34 Division 9 of the Welfare and Institutions Code, that reveal the
35 special negotiator's deliberative processes, discussions,
36 communications, or any other portion of the negotiations with
37 providers of health care services, impressions, opinions,
38 recommendations, meeting minutes, research, work product,
39 theories, or strategy, or that provide instruction, advice, or
40 training to employees.

1 Except for the portion of a contract containing the rates of
2 payment, contracts for inpatient services entered into pursuant to
3 these articles, on or after April 1, 1984, shall be open to
4 inspection one year after they are fully executed. In the event that
5 a contract for inpatient services that is entered into prior to April
6 1, 1984, is amended on or after April 1, 1984, the amendment,
7 except for any portion containing the rates of payment, shall be
8 open to inspection one year after it is fully executed. If the
9 California Medical Assistance Commission enters into contracts
10 with health care providers for other than inpatient hospital
11 services, those contracts shall be open to inspection one year
12 after they are fully executed.

13 Three years after a contract or amendment is open to inspection
14 under this subdivision, the portion of the contract or amendment
15 containing the rates of payment shall be open to inspection.

16 Notwithstanding any other provision of law, the entire contract
17 or amendment shall be open to inspection by the Joint Legislative
18 Audit Committee and the Legislative Analyst's Office. The
19 committee and that office shall maintain the confidentiality of the
20 contracts and amendments until the time a contract or
21 amendment is fully open to inspection by the public.

22 (r) Records of Native American graves, cemeteries, and sacred
23 places maintained by the Native American Heritage Commission.

24 (s) A final accreditation report of the Joint Commission on
25 Accreditation of Hospitals that has been transmitted to the State
26 Department of Health Services pursuant to subdivision (b) of
27 Section 1282 of the Health and Safety Code.

28 (t) Records of a local hospital district, formed pursuant to
29 Division 23 (commencing with Section 32000) of the Health and
30 Safety Code, or the records of a municipal hospital, formed
31 pursuant to Article 7 (commencing with Section 37600) or
32 Article 8 (commencing with Section 37650) of Chapter 5 of
33 Division 3 of Title 4 of this code, that relate to any contract with
34 an insurer or nonprofit hospital service plan for inpatient or
35 outpatient services for alternative rates pursuant to Section 10133
36 or 11512 of the Insurance Code. However, the record shall be
37 open to inspection within one year after the contract is fully
38 executed.

39 (u) (1) Information contained in applications for licenses to
40 carry firearms issued pursuant to Section 12050 of the Penal

1 Code by the sheriff of a county or the chief or other head of a
2 municipal police department that indicates when or where the
3 applicant is vulnerable to attack or that concerns the applicant's
4 medical or psychological history or that of members of his or her
5 family.

6 (2) The home address and telephone number of peace officers,
7 judges, court commissioners, and magistrates that are set forth in
8 applications for licenses to carry firearms issued pursuant to
9 Section 12050 of the Penal Code by the sheriff of a county or the
10 chief or other head of a municipal police department.

11 (3) The home address and telephone number of peace officers,
12 judges, court commissioners, and magistrates that are set forth in
13 licenses to carry firearms issued pursuant to Section 12050 of the
14 Penal Code by the sheriff of a county or the chief or other head
15 of a municipal police department.

16 (v) (1) ~~Records of the Major Risk Medical Insurance Program~~
17 *Managed Risk Medical Insurance Board* related to activities
18 governed by Part 6.3 (commencing with Section 12695) and Part
19 6.5 (commencing with Section 12700) of Division 2 of the
20 Insurance Code, and that reveal the deliberative processes,
21 discussions, communications, or any other portion of the
22 negotiations with health plans, or the impressions, opinions,
23 recommendations, meeting minutes, research, work product,
24 theories, or strategy of the board or its staff, or records that
25 provide instructions, advice, or training to employees.

26 (2) (A) Except for the portion of a contract that contains the
27 rates of payment, contracts for health coverage entered into
28 pursuant to Part 6.3 (commencing with Section 12695) or Part
29 6.5 (commencing with Section 12700) of Division 2 of the
30 Insurance Code, on or after July 1, 1991, shall be open to
31 inspection one year after they have been fully executed.

32 (B) In the event that a contract for health coverage that is
33 entered into prior to July 1, 1991, is amended on or after July 1,
34 1991, the amendment, except for any portion containing the rates
35 of payment, shall be open to inspection one year after the
36 amendment has been fully executed.

37 (3) Three years after a contract or amendment is open to
38 inspection pursuant to this subdivision, the portion of the contract
39 or amendment containing the rates of payment shall be open to
40 inspection.

1 (4) Notwithstanding any other provision of law, the entire
2 contract or amendments to a contract shall be open to inspection
3 by the Joint Legislative Audit Committee and the Legislative
4 Analyst's office. The committee and the office shall maintain the
5 confidentiality of the contracts and amendments thereto, until the
6 contract or amendments to a contract is open to inspection
7 pursuant to paragraph (3).

8 (w) (1) Records of the Major Risk Medical Insurance
9 Program related to activities governed by Chapter 14
10 (commencing with Section 10700) of Part 2 of Division 2 of the
11 Insurance Code, and that reveal the deliberative processes,
12 discussions, communications, or any other portion of the
13 negotiations with health plans, or the impressions, opinions,
14 recommendations, meeting minutes, research, work product,
15 theories, or strategy of the board or its staff, or records that
16 provide instructions, advice, or training to employees.

17 (2) Except for the portion of a contract that contains the rates
18 of payment, contracts for health coverage entered into pursuant
19 to Chapter 14 (commencing with Section 10700) of Part 2 of
20 Division 2 of the Insurance Code, on or after January 1, 1993,
21 shall be open to inspection one year after they have been fully
22 executed.

23 (3) Notwithstanding any other provision of law, the entire
24 contract or amendments to a contract shall be open to inspection
25 by the Joint Legislative Audit Committee and the Legislative
26 Analyst's office. The committee and the office shall maintain the
27 confidentiality of the contracts and amendments thereto, until the
28 contract or amendments to a contract is open to inspection
29 pursuant to paragraph (2).

30 (x) Financial data contained in applications for registration, or
31 registration renewal, as a service contractor filed with the
32 Director of the Department of Consumer Affairs pursuant to
33 Chapter 20 (commencing with Section 9800) of Division 3 of the
34 Business and Professions Code, for the purpose of establishing
35 the service contractor's net worth, or financial data regarding the
36 funded accounts held in escrow for service contracts held in force
37 in this state by a service contractor.

38 (y) (1) Records of the Managed Risk Medical Insurance
39 Board related to activities governed by Part 6.2 (commencing
40 with Section 12693) or Part 6.4 (commencing with Section

1 12699.50) of Division 2 of the Insurance Code, and that reveal
2 the deliberative processes, discussions, communications, or any
3 other portion of the negotiations with health plans, or the
4 impressions, opinions, recommendations, meeting minutes,
5 research, work product, theories, or strategy of the board or its
6 staff, or records that provide instructions, advice, or training to
7 employees.

8 (2) (A) Except for the portion of a contract that contains the
9 rates of payment, contracts entered into pursuant to Part 6.2
10 (commencing with Section 12693) or Part 6.4 (commencing with
11 Section 12699.50) of Division 2 of the Insurance Code, on or
12 after January 1, 1998, shall be open to inspection one year after
13 they have been fully executed.

14 (B) In the event that a contract entered into pursuant to Part
15 6.2 (commencing with Section 12693) or Part 6.4 (commencing
16 with Section 12699.50) of Division 2 of the Insurance Code is
17 amended, the amendment shall be open to inspection one year
18 after the amendment has been fully executed.

19 (3) Three years after a contract or amendment is open to
20 inspection pursuant to this subdivision, the portion of the contract
21 or amendment containing the rates of payment shall be open to
22 inspection.

23 (4) Notwithstanding any other provision of law, the entire
24 contract or amendments to a contract shall be open to inspection
25 by the Joint Legislative Audit ~~Committee~~. ~~The committee~~
26 *Committee and the Legislative Analyst's office. The committee*
27 *and the office* shall maintain the confidentiality of the contracts
28 and amendments thereto until the contract or amendments to a
29 contract are open to inspection pursuant to paragraph (2) or (3).

30 (5) The exemption from disclosure provided pursuant to this
31 subdivision for the contracts, deliberative processes, discussions,
32 communications, negotiations with health plans, impressions,
33 opinions, recommendations, meeting minutes, research, work
34 product, theories, or strategy of the board or its staff shall also
35 apply to the contracts, deliberative processes, discussions,
36 communications, negotiations with health plans, impressions,
37 opinions, recommendations, meeting minutes, research, work
38 product, theories, or strategy of applicants pursuant to Part 6.4
39 (commencing with Section 12699.50) of Division 2 of the
40 Insurance Code.

1 (z) Records obtained pursuant to paragraph (2) of subdivision
2 (c) of Section 2891.1 of the Public Utilities Code.

3 (aa) A document prepared by or for a state or local agency that
4 assesses its vulnerability to terrorist attack or other criminal acts
5 intended to disrupt the public agency's operations and that is for
6 distribution or consideration in a closed session.

7 ~~(bb) (1) Records of the Managed Risk Medical Insurance~~
8 ~~Board related to activities governed by Part 8.7 (commencing~~
9 ~~with Section 2120) of Division 2 of the Labor Code, and that~~
10 ~~reveal the deliberative processes, discussions, communications,~~
11 ~~or any other portion of the negotiations with entities contracting~~
12 ~~or seeking to contract with the board, or the impressions,~~
13 ~~opinions, recommendations, meeting minutes, research, work~~
14 ~~product, theories, or strategy of the board or its staff, or records~~
15 ~~that provide instructions, advice, or training to employees.~~

16 (2) (A) Except for the portion of a contract that contains the
17 rates of payment, contracts entered into pursuant to Part 8.7
18 (commencing with Section 2120) of Division 2 of the Labor
19 Code on or after January 1, 2004, shall be open to inspection one
20 year after they have been fully executed.

21 (B) In the event that a contract entered into pursuant to Part
22 8.7 (commencing with Section 2120) of Division 2 of the Labor
23 Code is amended, the amendment shall be open to inspection one
24 year after the amendment has been fully executed.

25 (3) Three years after a contract or amendment is open to
26 inspection pursuant to this subdivision, the portion of the contract
27 or amendment containing the rates of payment shall be open to
28 inspection.

29 (4) Notwithstanding any other provision of law, the entire
30 contract or amendments to a contract shall be open to inspection
31 by the Joint Legislative Audit Committee. The committee shall
32 maintain the confidentiality of the contracts and amendments
33 thereto until the contract or amendments to a contract are open to
34 inspection pursuant to paragraph (2) or (3).

35 (ee)–

36 (bb) All information provided to the Secretary of State by a
37 person for the purpose of registration in the Advance Health Care
38 Directive Registry, except that those records shall be released at
39 the request of a health care provider, a public guardian, or the
40 registrant's legal representative.

1 Nothing in this section prevents any agency from opening its
2 records concerning the administration of the agency to public
3 inspection, unless disclosure is otherwise prohibited by law.

4 Nothing in this section prevents any health facility from
5 disclosing to a certified bargaining agent relevant financing
6 information pursuant to Section 8 of the National Labor
7 Relations Act.

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